

RECEIVED
CENTRAL FAX CENTER

MAR 02 2005

I hereby certify that this correspondence is being facsimile transmitted to MS
Amendment of the U.S. Patent and Trademark Office, facsimile no. (703) 872-
9306, on the date shown below.

Dated: March 2, 2005

Signature: Docket No : 377832001800
(PATENT)**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:
Karen L. FEARON et al.

Application No.: 10/033,243

Art Unit: 1645

Filed: December 27, 2001

Examiner: P. Duffy

For: IMMUNOMODULATORY
POLYNUCLEOTIDES AND METHODS OF
USING THE SAME

RESPONSE TO RESTRICTION REQUIREMENT

MS Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is in response to the Office Action dated September 2, 2004 which sets forth a restriction requirement for pending claims 1-46 in the above-identified application. Filed herewith is a Petition and fee for a five month extension of time, thereby extending the deadline for response to March 2, 2005. Accordingly, this response is timely filed.

Previous restriction requirements were issued September 11, 2003 and April 20, 2004 and were timely responded to by Applicants. Applicants understand that the September 2, 2004 restriction requirement supersedes the previous restriction requirements and responses thereto, and that the previous restriction requirements are vacated and withdrawn.

Restriction has been required as between 55 allegedly distinct groups of inventions. All of these groups are classified in class 514, subclass 44. Claims 1, 15-26, 47, and 48 are designated

sd-221693

Application No.: 10/033,243

Docket No.: 37788201800

as linking inventions of groups 1-21. Claims 5, 15-25, 27, 47, and 48 are designated as linking inventions of groups 22-37. Claims 28-31, 40, 41, and 43 are designated as linking inventions of groups 38-51.

Applicants hereby elect the group from groups 1-21 which includes SEQ ID NO:132 of claim 4, with traverse. Applicants do not agree with the designation of each SEQ ID NO into a separate, distinct group.

The Examiner states that each species of groups 1-21 "represents a different chemical structure that would require a different search of the prior art" and "the search for one would not anticipate the other." Office Action, pages 4-5. Applicants note that claims 2-4 all depend from claim 1 and that claim 1 defines a common core structure generic to those recited in claims 2-4. Further, all of the designated groups are classified in the same class and subclass. Thus, Applicants respectfully submit that examination of claims 1-4 and the corresponding dependent claims directed to a polynucleotide, for example, does not present an undue search burden.

Applicants note that claims 1, 15-26, 47, and 48 are designated as linking inventions of the elected group. Upon allowance of the linking claim(s), any claim(s) depending from or otherwise including all the limitations of the allowable linking claim(s) will be entitled to examination in the instant application.

Should the elected product claims be found allowable, Applicants reserve the right to request rejoinder of withdrawn process claims which include all the limitations of the allowable product claim for examination (M.P.E.P. §821.04). Applicants expressly reserve their right under 35 U.S.C. § 121 to file a divisional application directed to the nonelected subject matter during the pendency of this application, or an application claiming priority from this application.

Applicants request examination of the elected subject matter on the merits.

Application No.: 10/033,243

Docket No.: 377882001800

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket No. 377882001800.

Dated: March 2, 2005

Respectfully submitted,

By Karen R. Zachow
Karen R. Zachow, Ph.D.
Registration No.: 46,332
MORRISON & FOERSTER LLP
3811 Valley Centre Drive, Suite 500
San Diego, California 92130
(858) 720-5191

sd-221693

3